

II. EPA FAILED TO PROVIDE OBVIOUSLY RESPONSIVE RECORDS AND FAILED TO PROVIDE OTHER RESPONSIVE RECORDS IN PROPER FORMAT.

EPA withheld or has otherwise not provided records that, by law, obviously must be produced. EPA provides no basis for withholding these records (they are not identified in EPA's Non-Disclosure List)⁶ and no credible ground exists for non-disclosure.

Mass Spectrometry Data from Region 3 and Shaw: EPA still has not provided the mass spectrometry data from Region 3 or Shaw (one of EPA's contractors) for Phases IV and V.⁷ These data are critical to EPA's conclusion in the Draft Report. EPA did not list these data on its Non-Disclosure List, and there would be no basis for withholding these records in any event. What is clear from the data that has been provided, and is important to public understanding and comment on the Draft Report, is that there are serious Quality Assurance/Quality Control deficiencies associated with the mass spectrometry data from all phases of EPA's sampling. Given what is known, there is reason to believe that the remaining, yet to be produced, mass spectrometry data will be similarly flawed. EPA should be required to produce these records.

Contract Laboratory Program ("CLP") Data Packages: EPA has also failed to produce any CLP data packages for its investigation. EPA requires that these data packages, as a matter of course, including various types of documentation identified in EPA Guidance

⁶ EPA committed to advise Encana promptly if any of the requested records do not exist. EPA has not done so for any records requested. Exhibit 6 ("If EPA determines that a record Encana requested does not exist, EPA will inform Encana in writing as soon as practicable that the record does not exist.")

⁷ On August 14, 2012, Encana submitted another FOIA requests to EPA seeking particular information specific to Phase V ("Phase V FOIA Requests"). Some overlap exists between the Consolidated Requests and the Phase V FOIA Requests. EPA has not produced the Phase V mass spectrometry data in response to either requests. Encana will separately file its appeal to EPA's response to the Phase V Requests on January 3, 2013.

documents. These records, like the mass spectrometry data, are important to evaluation of the legitimacy, validity, and reliability of the data. EPA's continued failure to produce these standard data packages is inexplicable. EPA should be required to produce these records.

Method Development Records: In addition, EPA failed to produce critical records on its development of non-standard analytical methods that EPA used. Method development documents are crucial to documenting the validity, reliability and other aspects of an analytic procedure and the generated data. If no such records exist, then EPA's use of non-approved methods and reliance on data generated with these methods is a serious scientific flaw in the Draft Report. Method development requires at least the following documentation, none of which have been produced by EPA: method validation studies, method detection limit studies, accuracy and precision data studies. EPA should be required to produce these records.